

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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H. CHRISTINA CHEN-OSTER, et al.,

Plaintiffs,

- against -

GOLDMAN, SACHS & CO., et al.,

Defendants.
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10 Civ. 06950 (AT) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This Court previously ruled on the privilege status of Goldman Sachs' "White Papers," which were created for the purpose of providing legal advice about diversity of Goldman's workforce. (See Dkt. 950.) During the conference held on July 30, 2020, in the context of discussing Goldman's clawback demand for inadvertent production of a White Paper, I stated that "my ruling stands on that."

By letter dated August 14, 2020, Plaintiffs asked the Court to revisit the issue and deny Goldman's clawback request in light of certain deposition testimony provided by a prior Goldman Chief Diversity Officer. (Dkt. 1062, 1066.) Plaintiffs' request is denied, and Goldman's clawback request is sustained.

The Court agrees that the attorney-client privilege should not be abused. In that respect, the Court finds apt the following principle set forth in an earlier employment discrimination case: "A corporation may not insulate itself from suit for civil rights violations by funneling all data on the demographic composition of its work force to in-house counsel, eliminating the underlying records, and then claiming that the data in the in-house counsel's file is privileged." *Abel v. Merrill Lynch & Co., Inc.*, No. 91 Civ. 6261,

1993 WL 33348, at *3 (S.D.N.Y. Feb. 4, 1993). That scenario, however, is not what is presented by the instant case. Rather, Goldman represents that it already has produced all relevant demographic data, including all the data underlying the White Papers. Plaintiffs are able to crunch and assess the data just the same as Goldman can. Meanwhile, Goldman has otherwise met its burden to establish that the White Papers are protected by the attorney-client privilege.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal stroke extending to the right.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: August 24, 2020
New York, New York

Copies transmitted to all counsel of record.